



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

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December 29, 2010



TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director  
Matt Crall, Land Use-Transportation Planning Specialist

SUBJECT: **Agenda Item 12, January 12–13, 2011 LCDC Meeting**

## **TRANSPORTATION PLANNING RULE 0060 – JOINT SUBCOMMITTEE**

### **I. AGENDA ITEM SUMMARY**

The commission heard testimony regarding section 0060 of the Transportation Planning Rule (TPR; OAR 660-012-0060) on September 1, 2010. A written request to initiate rulemaking was received from the League of Oregon Cities (LOC) on November 24, 2010. In response, the commission asked the department to work with the Department of Transportation to re-convene the joint transportation subcommittee of the Oregon Transportation Commission (OTC) and the commission. That has been done, and the first meeting of the subcommittee will occur on January 21, 2011. The schedule for the joint subcommittee is:

Initial meeting for background presentations – January 21, 2011

Possible additional meetings for review of recommendation and deliberations – February 2011

Recommendation to LCDC and OTC – March 2011

#### **A. Type of Action and Commission Role**

Two actions are recommended. First, the department recommends that the commission deny the rulemaking petition submitted by the League of Oregon Cities, but indicate that it expects to initiate such a rulemaking on its own motion. Second, the commission should request the joint subcommittee to review concerns with OAR 660-012-0060, and make recommendations about whether to initiate rulemaking and what the scope of the rulemaking should be.

The transportation subcommittee is a standing subcommittee of LCDC. The LCDC members are Hanley Jenkins, Greg Macpherson and Marilyn Worrix. The OTC has appointed Alan Brown, Dave Lohman and Mary Olson to participate in the joint subcommittee.

## **B. Staff Contact Information**

For additional information please contact Matt Crall at 503-373-0050 x272, or by e-mail at [matthew.crall@state.or.us](mailto:matthew.crall@state.or.us).

## **II. RECOMMENDATION**

First, the department recommends that the commission agree with the LOC request in principle, but not treat the request as a petition for rulemaking under ORS 183.390 and OAR 137-001-0070. The request does not cite ORS 183.390, and does not, “set forth the proposed language in full” as required by OAR 137-001-0070(1)(a). The department recommends that the LOC request be referred to the joint subcommittee for a specific recommendation in March 2011.

Second, the department recommends that the commission ask the joint subcommittee to make recommendations concerning:

- (1) Whether to initiate formal rulemaking on OAR 660-012-0060 and/or whether to request that the OTC consider rulemaking on related provisions of the Oregon Highway Plan?
- (2) What are the highest priority issues that should be addressed in any proposed rulemaking?
- (3) How should the process be structured to recognize the joint authority of LCDC and OTC concerning these issues?

## **III. BACKGROUND**

### **A. Transportation Planning Rule Section 0060**

OAR 660-012-0060 applies to local government consideration of plan or land use regulation amendments (including zone changes), and requires that local governments assess whether the transportation facilities and services included in the Transportation System Plan (TSP) will be adequate to support the land uses that would be allowed by a proposed plan amendment or zone change.

The text of section 0060 is included in Attachment C. A summary of the key provisions of section 0060 is provided below.

- Section 0060 applies only to plan and land use regulation amendments (including zone changes). It does not apply to other types of land use decisions that do not involve a plan or land use regulation amendment – such as a conditional use development review.
- Section 0060 requires detailed analysis of transportation impacts only where a proposed use would allow more intense development than is allowed by existing planning and zoning. (In other words, a plan or zone change that does not allow more traffic than is allowed by existing zoning does not trigger a TPR “significant effect”).

- Where a plan amendment would allow more traffic than current planning and zoning, local governments must assess whether planned improvements have adequate capacity to support the planned land uses.
- When state highways would be affected, local governments must coordinate with ODOT to assess whether ODOT's performance standards for state highways – set forth in the Oregon Highway Plan (OHP) – will be met.
- To determine whether planned improvements are adequate, local governments must consider whether improvements that are planned and expected to be constructed over the planning period (typically the next 15–20 years) will have adequate capacity to support the proposed land uses.
- Expected transportation improvements are those that are included in or allowed by adopted transportation system plans and that have some level of funding commitment.
- The rule lists qualifying funding commitments. They include:
  - projects that are scheduled for funding in local capital improvement programs or are scheduled for funding;
  - improvements that local governments (for local roads) and ODOT (for state highways) agree are “reasonably likely” to be provided during the planning period; and
  - Improvements that are required to be built as a condition of approval.
- Where planned improvements are not adequate to support the planned land use, local governments have several options to put land use and transportation in balance:
  - They can limit the allowed land uses to match available capacity;
  - They can amend the TSP to expand transportation capacity; or
  - They can amend the TSP to change performance standards to accept increased congestion.
- When a state highway is affected, the local government must coordinate its decision with ODOT, and may need to have ODOT agree to a local TSP amendment or, in some cases, seek an amendment to the Oregon Highway Plan to change the performance standard on a state highway.

Detailed information about this section of the rule, including reports and recommendations from a previous joint subcommittee and department staff, as well as related guidance materials, are available on the department's website:

<http://www.oregon.gov/LCD/transplan.shtml>

## **B. Stakeholder Interests and Concerns**

The provisions of OAR 660-012-0060 have received close attention by the commission over the last several years. The current provisions of the rule were adopted by the commission in March 2005, following an extensive evaluation of the TPR and work by a previous joint subcommittee of LCDC and OTC.

Overall, there is broad support for the basic principle in TPR section 0060: that local governments should consider and address the transportation impacts of plan and zone changes at

the time they are making decisions about what types of land uses to allow in an area. At the same time, disagreement remains about whether additional changes to the TPR or the OHP are needed to accomplish this objective, and the tension between this objective and other important land use and transportation planning objectives.

Local governments and other stakeholders have raised several interrelated concerns about the TPR and related provisions of the OHP:

- Whether TPR requirements in combination with ODOT highway performance standards interfere with local efforts to accommodate important economic development opportunities, especially efforts to attract family wage jobs and traded-sector development.
- Whether ODOT's standards for highway performance are consistent with state and local land use objectives to promote compact, mixed-use development in urban areas. (Metro and several other communities have expressed concern that OHP mobility standards create a barrier to local efforts to plan land for more intense uses that carry out broader directives in the TPR to promote land use patterns that reduce reliance on the automobile.)
- Whether local governments should be able to defer detailed transportation analysis and identification of mitigation measures to the time of review of specific development proposals.
- Whether local governments should be able to count improvements as "planned" when the improvement is included in its TSP, regardless of whether the project is funded.
- Whether zone changes that are consistent with and carry out terms of an adopted comprehensive plan should be subject to section 0060 requirements.
- Whether standards for transportation performance, especially for state highways in urban areas, are financially realistic or attainable given likely future transportation funding.
- Whether TPR requirements place an unfair burden on plan amendment applicants as "the last one in" to address transportation deficiencies that are also the result of traffic from other development.

#### **IV. DEPARTMENT ANALYSIS**

The OTC's rulemaking to implement HB 3379 provides ODOT and local governments with additional flexibility to accommodate economic development opportunities through extensions of time to meet TPR funding requirements, through approval of alternative funding arrangements, and through changes to highway performance standards. This creates a faster track

for ODOT to change its performance standards on a case-by-case basis to accommodate economic development projects.

The fact that many streets and highways in larger urban areas are at or approaching capacity, given our current methods of measuring acceptable performance, constitutes a major land use-transportation problem. This problem is compounded by a large “funding gap.” That is, TSPs often identify a combination of improvements as “needed,” but these improvements greatly exceed the amount of funding that is expected to be available during the planning period. Plan and zone changes that allow more intense development and resulting traffic, and that would worsen this imbalance, obviously warrant careful consideration. This situation is most apparent on state highways, because the funding gap there is often the widest and because local governments must coordinate plan and zone changes with ODOT to address OHP standards for highway performance.

It is important to keep in mind that the TPR and the OHP establish a range of options for local governments to achieve a balance between land use and transportation objectives, and HB 3379 creates additional options. These options have been used successfully in some areas. DLCD and ODOT work regularly with local governments to help them use these options. At same time, the department recognizes that concerns remain and that further changes to either the OHP or TPR, or both, may be needed to expand the range of available tools for resolving conflicts between competing objectives.

#### **ATTACHMENTS**

- A. Request from League of Oregon Cities
- B. TPR 0060 (OAR 660-012-0060)



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November 24, 2010

John VanLandingham, Chairman, LCDC  
Members of the Oregon Land Conservation and Development Commission

Richard Whitman, Director  
Oregon Department of Land Conservation and Development

RE: Petition for Rule Amendment – OAR 660-012-0060 (TPR)

Dear Chair VanLandingham and Members of the Commission:

Enclosed please find a petition from the League of Oregon Cities for revisions to the Transportation Planning Rule (TPR), OAR 660-012-0060.

As you are aware, the League works with its 242 member cities to help serve the citizens of Oregon and provide sustainable communities that offer family wage jobs, affordable homes, quality schools/infrastructure, adequate public safety and recreational opportunities. Cities have a unique role in providing, enhancing, and protecting economic opportunities within the state – over 80% of Oregon's jobs are located within cities and over 80% of the state's income tax revenues are generated within cities. In order for our citizens, communities, and the state to garner the benefits of economic opportunities, there needs to be working hydraulics between policies that support and guide the complex linkage between transportation infrastructure and land use planning. We believe one of those policies, the Transportation Planning Rule (TPR), creates unnecessary impediments to state and local objectives that guide economic development opportunities and other planning requirements. Accordingly, we are filing the enclosed petition and request LCDC to commence review and revisions to the TPR during the calendar year 2011.

We appreciate your due consideration of this important matter. If you have any questions, please do not hesitate to contact me at [lludwig@orcities.org](mailto:lludwig@orcities.org), or 503.540.6574.

Respectfully submitted,

Linda Ludwig, Deputy Legislative Director

**Petition for Rule Revision**  
**Oregon Land Conservation and Development Commission**

In the Matter of Adopting Revisions to )  
the Transportation Planning Rule )

Petition for Rule Amendment  
OAR 660-012-0060 (TPR)

Petitioner is the League of Oregon Cities; mailing address: PO Box 928, Salem Oregon 97308.

Petitioner is an intergovernmental organization formed under ORS 190.010 – 190.111 that represents all of Oregon’s 242 incorporated cities. The League was founded in 1925 and is governed by a 15-member Board of Directors.

Petitioner works in partnership with its member cities to help local government better serve the citizens of Oregon. The League and the state’s elected and appointed officials share constituencies in our collective efforts to provide sustainable communities that offer family wage jobs, affordable homes, quality schools, quality infrastructure, adequate public safety and recreational opportunities.

Petitioner plays an important role in representing the economic interests of Oregon’s cities – over 80% of Oregon’s jobs are located within cities, and more than 80% of the state’s income tax revenues are generated by city residents. Cities are where the bulk of the state’s growing infrastructure needs are located – 72% of Oregon’s population are city residents. Cities are responsible for promulgating local rules and implementing state and local policies that support the complex linkage between transportation and land use planning.

Petitioner proposes that the Oregon Land Conservation and Development Commission tender revisions to the Transportation Planning Rule (TPR) that would eliminate the conflicts that occur between various Statewide Planning Goals and the Transportation Planning Rule when interpretations of what constitutes a significant effect result in a triggering of the rule. Petitioner also observes that there are a number of other provisions that could be amended to enhance economic growth and development by avoiding unnecessary cost and delay created by the current language of the rule, and proposes an evaluation and additional streamlining revisions accordingly.

Those interested in Transportation Planning rule revisions include the cities of Corvallis, Ashland, Portland, Eugene, Tigard, Bend, Redmond, Springfield, Lake Oswego, Tualatin, and Madras. The balance of many of Oregon’s 242 cities are additionally interested (including those non-MPO cities, and those and those that have a State highway adjacent to or bisecting their city), and the Oregon City Planning Directors Association. Other non-city interests include: LCDC’s Local Officials Advisory Committee (LOAC), some or many of Oregon’s counties, Metro, state agencies including but not limited to the Oregon Department of Transportation, developers and development interests, the Oregon Home Builders Association, the International Council of Shopping Centers, and unnamed others.

Reasons for the adoption of rule revisions:

Many cities have reported that their long term housing and economic development objectives have been comprised as a result of conflicts when trying to comply with the language of the Transportation Planning Rule and other Statewide Planning Goals – particularly with regard to critical economic development (Goal 9) and increasing densities within the urban growth boundaries (Goals 10 & 14). Specifically, when a zone change or plan amendment would result in a significant effect to a state facility, and the capacity of the transportation system cannot be increased through presently allowable measures, the TPR prevents the planned increase in the density of the development (at times even if these densities are already designated and/or adopted in a city’s comprehensive plan). This causes development capacity to be shifted to the edge of the city or the region where there is theoretical capacity on state facilities, but over time adds to

congestion and the likely undermining of carbon reduction goals – failing to achieve what is best for local communities, regions and the state.  
Therefore, Petitioner requests the Oregon Land Conservation and Development Commission to commence review and revisions to the Transportation Planning Rule no later than the calendar year 2011.

Dated this 24<sup>th</sup> day of November, 2010.

**League of Oregon Cities**

By

  
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Michael J. McCausley, Executive Director

**OAR CHAPTER 660, DIVISION 12  
TRANSPORTATION PLANNING**

**660-012-0060**

**Plan and Land Use Regulation Amendments**

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:
  - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
  - (b) Change standards implementing a functional classification system; or
  - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
    - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
    - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
    - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
  - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
  - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
  - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
  - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
  - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.
- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an

amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
  - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
  - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;
  - (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
  - (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.
- (4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected

transportation facility and service providers and other affected local governments.

- (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
- (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
  - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.
  - (B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.
  - (C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.
  - (D) Improvements to state highways that are included as planned improvements in a regional or local

- transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.
- (E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.
- (c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:
- (A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or
- (B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.
- (d) As used in this section and section (3):
- (A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;
- (B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and
- (C) Interstate interchange area means:
- (i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or
- (ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.
- (e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).
- (5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.
- (6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in 0060(1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in (a)-(d) below;
- (a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour

trips than are specified in available published estimates, such as those provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

- (b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in (a);
- (c) Where a local government assumes or estimates lower vehicle trip generation as provided in (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in 0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and
- (d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will

vary from case to case and may be somewhat higher or lower than presumed pursuant to (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

- (7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in (a)-(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in Section 0020(2)(b) and Section 0045(3) of this division:
  - (a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;
  - (b) The local government has not adopted a TSP or local street plan which complies with Section 0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and
  - (c) The proposed amendment would significantly affect a transportation facility as provided in 0060(1).
- (8) A "mixed-use, pedestrian-friendly center or neighborhood" for the purposes of this rule, means:
  - (a) Any one of the following:

- (A) An existing central business district or downtown;
  - (B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;
  - (C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or
  - (D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.
- (b) An area other than those listed in (a) which includes or is planned to include the following characteristics:
- (A) A concentration of a variety of land uses in a well-defined area, including the following:
    - (i) Medium to high density residential development (12 or more units per acre);
    - (ii) Offices or office buildings;
    - (iii) Retail stores and services;
    - (iv) Restaurants; and
    - (v) Public open space or private open space which is available for public use, such as a park or plaza.
  - (B) Generally include civic or cultural uses;
  - (C) A core commercial area where multi-story buildings are permitted;
  - (D) Buildings and building entrances oriented to streets;
  - (E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;
  - (F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;
  - (G) One or more transit stops (in urban areas with fixed route transit service); and
  - (H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.